

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1786 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

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STATE OF GUJARAT

Versus

RAJENDRASINH NARAYANSINH ZALA

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Appearance:

MR. Y.F. MEHTA, ASSTT. PUBLIC PROSECUTOR, for the petitioner - the State of Gujarat.

MR. R.D. DAVE, Advocate for the respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/10/96

ORAL JUDGEMENT

The State of Gujarat by this petition under Article 227 of the Constitution of India has challenged the order dated 4-8-1990 passed by the learned Sessions Judge, Banaskantha at Palanpur in Criminal Appeal No.5 of 1988 under Section 61D of the Indian Forest Act, whereby

the learned Sessions Judge set aside the order of confiscation of truck No.GRU 1002 passed by the Deputy Conservator of Forest, Banaskantha District, Palanpur.

2. On 20-8-1985 at early hours at 4-00 a.m. 2 kms. from Varahi towards Santalpur on the road leading from Varahi to Bhuj, the Forest Officer of Radhanpur, intercepted the truck in question which was found loaded with "Charcol". The respondents no.2 and 3 were found in the truck. It is the case of the Forest Department that "Charcol" was transported without any pass or permit by the said respondents and accordingly 210 gunny bags of "Charcol" and the truck in question were seized by the Forest Department. The Deputy Conservator of Forest by his order dated 4-11-1987 confiscated the truck in question against which the respondents preferred the appeal being Criminal Appeal No.5 of 1988 before the learned Sessions Judge, Banaskantha. On 2-4-1988 the learned Sessions Judge, Banaskantha after partly allowing the appeal set aside the order of confiscation passed by the Deputy Conservator of Forest and dismissed the rest of the appeal.

3. One of the reasons given by the learned Sessions Judge in setting aside the order of confiscation of the truck in question is to the effect that the penalty is totally disproportionate to the alleged breach of the provisions of law. Admittedly the price of 210 bags of "charcol" is Rs.3,150/- which have already been seized by the Forest Department. However, the value of the truck is worth Rs.2 lacs. It is a settled law that "the confiscation of the vehicle would be illegal and unsustainable, if the value of the contraband alleged to have been carried in the vehicle is negligible, compared to the value of the vehicle."

4. In view of this, in my opinion the learned Sessions Judge was right in setting aside the order of confiscation of the truck in question passed by the Deputy Conservator of Forest, Banaskantha District. In the result, the appeal fails and the same is dismissed. Rule discharged.

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